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SENSITIVE
SIPDIS
STATE FOR WHA/CAR (RALVARADO)(VDEPIRRO)(WSMITH)
WHA/EPSC (MROONEY) (FCORNEILLE)
EEB/IFD/OMA
WHA/PPC (JGONZALEZ)
INR/RES (RWARNER)
INR/I (SMCCORMICK)
SANTO DOMINGO FOR FCS AND FAS
TREASURY FOR ERIN NEPHEW
EXPORT IMPORT BANK FOR ANNETTE MARESH
USTR FOR KENT SHIGETOMI

E.O. 12958: N/A

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JM, XL

SUBJECT: JAMAICA: OPERATION OF THE CARIBBEAN BASIN ECONOMIC RECOVERY
ACT (2009)

TRADE OBLIGATIONS

¶1. Jamaica is a signatory to the WTO Agreement and has generally demonstrated a commitment to undertaking its obligations. While the Golding administration, reeling under the effects of the global economic crisis, has championed the need for the country to replace particularly agricultural imports, it has maintained that this has to be done under the auspices of current trade agreements. Agriculture and manufacturing interests have also blamed the country's gargantuan trade deficit on its "so called" liberal trading arrangements. The country was committed to the completion of the Free Trade Area of the Americas, but its efforts were stymied by smaller CARICOM members, who were concerned about the impact of such an agreement on their vulnerable economies in the absence of special and preferential treatment.

¶2. The current view coming out of CARICOM is that the stakeholder community has reservations about a free trade agreement with the U.S. at this time. However, the Council for Trade and Economic Development has cleared Trinidad and Tobago to embark on discussions with the U.S. on a product specific agreement. Jamaica appears to be more interested in the revival of the Trade and Investment Council (TIC) and a discussion of a draft Trade and Investment Framework Agreement (TIFA) submitted by CARICOM. Chief among the concerns for discussion is Jamaica's huge trade deficit with the U.S. Jamaican officials posit that although market access might exist, there are serious supply side constraints which require external intervention. However, a member of the former Caribbean Regional Negotiating Machinery is of the opinion that CARICOM is distracted by upcoming negotiations with Canada. Even more important is the view that CARICOM already has ample market access, including the recently signed Economic Partnership Agreement with the EU.

¶3. Jamaica remains the largest recipient of CARICOM goods, which increased by 30.4 percent in 2008 to USD 1.7 billion. With the country exporting less than USD 100 million to other CARICOM states, this translated into a trade deficit of over USD 1.6 billion. This imbalance has placed Jamaica at odds with some of

its partners in CARICOM, with many in the GOJ increasingly skeptical as to whether CARICOM membership has been beneficial to Jamaica's economic interests. Recent developments suggest an absence within CARICOM of a shared vision of the future, and a region splintering into new interregional relationships, driven by differing levels of development among CARICOM states and growing signs of protectionism and insularity in response to the global economic crisis.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

¶4. In addition to being a member of the World Intellectual Property Organization and a signatory of the Bern Convention, Jamaica and the U.S. have an Intellectual Property Rights Agreement and a Bilateral Investment Treaty, which provide assurances to protect intellectual property. Although Jamaica remains a Special 301 "Watch List" country because the patent law is not TRIPS compliant, work is advanced on a new Patent & Designs Bill, which could be tabled this legislative year. A Geographical Indications Act was passed in 2004 and general law provides protection for Trade Secrets. The Copyright Act of 1993, as amended, complies with the TRIPS Agreement and adheres to the principles of the Bern

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Convention, and covers works ranging from books and music to computer programs. The Act needs to be amended to give effect to the provisions of the WIPO WCT and WPPT (Internet) Treaties to which Jamaica acceded in 2002.

¶5. The Trademark Act of 1999 is also compliant with the TRIPS Agreement and provides the owner of registered trademarks exclusive rights for up to ten years, renewable. It provides for the protection of "well-known" marks under the Paris Convention. A TRIPS compliant Layout Designs Act has also been in effect since June 1999. The Act provides protection for layout-designs for integrated circuits and gives the rights owner the exclusive right to reproduce, import, sell or otherwise commercially exploit the layout-design. Enforcement of IP rights has improved significantly in recent times with the police becoming more active in pursuing breaches. The Jamaica Intellectual Property Office has also been working with stakeholder interests to ensure that there is full compliance with IP laws.

WORKER RIGHTS

¶6. Jamaica has ratified the following ILO Conventions:

(I) Right of Association (Agriculture) Convention 1921 - ratified July 8, 1963; Freedom of Association and Protection of the Right to Organize Convention, 1948 - ratified December 26, 1962

(II) Right to Organize and Collective Bargaining Convention, 1949 - ratified December 26, 1962

(III) Forced Labor Convention (29) - ratified in 1962; Abolition of Forced Labor Convention (105) - ratified in 1962

(IV) Minimum Age for Employment Convention (138) - ratified in 2003: Children must be at least 15 years of age to engage in any form of gainful employment. However, children should not work at nights and should not be taken out of schools for employment purposes. The Worst Forms of Child Labor Convention was ratified in 2003.

17. Worker rights in Jamaica are defined and protected under the Labor Relations and Industrial Disputes Act, with the Industrial Disputes Tribunal (IDT) hearing collective bargaining cases. Workers generally enjoy full rights of association, as well as the right to organize and bargain collectively. However, unionized workers have frequently been laid off and then rehired as contractors with reduced remuneration. This issue was the subject of litigation for a number of years and in July 2009 the Court of Appeals upheld a 2005 decision by the IDT, in favor of a representational rights poll for contract workers. Jamaican labor law neither authorizes nor prohibits strikes. However, workers in the "essential services" are prohibited from striking. The general minimum wage is \$46 for a 40-hour week, including at least one day of rest. Employees are expected to work for eight hours per day, with any additional time remunerated at times and a half or twice the regular rate.

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CHILD LABOR

18. Jamaica ratified ILO Convention 182 in 2003, and in March 2004 passed the Child Care and Protection Act (CCPA). The CCPA implements the Government of Jamaica's strategy to eliminate the worst forms of child labor, and establishes a framework within which all forms of child abuse may be proscribed. It includes a prohibition on employing a child under the age of 13 in any form of work, and restricts both the type of employment and hours of work permitted for children between the ages of 13 and 15. The formal institutional mechanism for investigation into allegations of the mistreatment of children is the Child Development Agency, which operates under the auspices of the Ministry of Health.

19. Additionally, Jamaica cooperates with non-governmental organizations such as Children First to prevent child labor. It signed a Memorandum of Understanding with ILO-IPEC, and has established a National Steering Committee for the Protection of Children in conjunction with ILO-IPEC. While Jamaica continues to make significant efforts to address child labor issues, it is often constrained by poor enforcement mechanisms. Additionally, the law does not specifically prohibit forced or compulsory labor, including by children, and there were reports of child prostitution and of children trafficked into domestic servitude and forced labor.

COUNTER-NARCOTICS EFFORTS AND EXTRADITION TREATY

10. Jamaica continues to be a major transit point for South American cocaine, and remains the largest Caribbean producer and exporter of marijuana. While Jamaica is listed in the 2008 Presidential Determination as a major illicit drug-producing or drug-transit country, it has worked with the U.S. to combat drug trafficking and, therefore, has not been identified by the

President as having failed to comply with the criteria in the FRAA. Jamaica is a signatory to both a Mutual Legal Assistance Treaty and an Extradition Treaty regarding U.S. citizens, Jamaicans, and third-country nationals.

CORRUPTION

¶11. Jamaica has a Corruption Prevention Act which, among other things receives and examines the statutory declarations of public sector workers and if necessary investigates complaints regarding corruption. To date there has been no enforcement, as the Commission lacks the capacity to enforce the filing of declarations. Jamaica is a signatory of the OECD Anti-Bribery Convention and has ratified the Inter-American Convention Against Corruption. However, Jamaica is not a signatory to the UN Anticorruption Convention. Jamaica prosecutors continue to take part in regional anti-corruption conferences, with one such conference developed by the United States Department of Justice. The new government has also publicly advocated for the adoption of whistle blower legislation and the establishment of a Special Prosecutor for Anti-Corruption to improve transparency and reduce

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public corruption. A senior police officer and a former Minister of Government are currently before the courts on corruption matters.

GOVERNMENT PROCUREMENT

¶12. The GOJ has comprehensive public procurement procedures, which are vigorously enforced by the Contractor General. Government procurement is generally done through open tenders, direct advertising, or by invitation to registered suppliers. U.S. firms are eligible to bid. The range of manufactured goods produced locally is relatively small, so there are few instances of foreign goods competing with domestic manufacturers. Companies interested in supplying office supplies to the government must register with the Financial Management Division of the Ministry of Finance.

PROPERTY RIGHTS

¶13. Property rights are protected under Section 18 of the Jamaican Constitution. Expropriation of land may take place under the Land Acquisition Act, which provides for compensation on the basis of market value. Expropriation can take place before compensation is paid, but in this case interest for the period between the expropriation and the compensation settlement must be paid. According to the law, the purpose of any expropriation must be transparent and compensation for expropriated property must be adequate. If informal negotiations on compensation fail, the investor has recourse to the courts. Jamaica has signed bilateral agreements for the reciprocal promotion and protection of investments with a number of countries, including the United States. The Embassy is not aware of any litigation between the Jamaican government and any private individual or company based on expropriation or on compensation for expropriation.

ARBITRAL AWARDS

¶14. Jamaica, a signatory to the International Center for the Settlement of Investment Disputes (ICSID) since 1965, accepts international arbitration of investment disputes between Jamaicans and foreign investors. Local courts also recognize and enforce foreign arbitral awards. International arbitration is also accepted as a means for settling investment disputes between private parties. However, acting in its role as an international tribunal, the Caribbean Court of Justice interprets and applies the Revised Treaty of Chaguaramas. There is no formal domestic arbitration body in Jamaica, but disputing parties can use arbitration proceedings to settle their disputes. These proceedings would be guided by the Arbitration Act which sets out the procedures disputing parties would follow once they agree on arbitration and is read in conjunction with the Arbitration Clauses Protocol Act, which in turn makes reference to how foreign arbitral awards will be addressed. If a foreign investor's country has a BIT with Jamaica then the rules of this treaty would apply. Other foreign investors are given national treatment and civil procedures would apply. Disputes between enterprises are handled in the local courts, but foreign investors can refer cases to ICSID. There have been cases of trademark infringements in which U.S. firms took action and were granted restitution in the local courts.

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PREFERENTIAL TREATMENT AND COPYRIGHT ISSUES

¶15. Jamaica does not provide preferential treatment to the products of any developed countries. However, CARICOM recently signed an Economic Partnership Agreement with the European Union to establish a WTO compatible trading arrangement. Jamaica has a very strong copyright regime, which adheres to the principles of the Bern Convention, and covers works ranging from books and music to computer programs. The government has actively enforced this Act, but in recent times the rights holder for HBO in Jamaica has complained about broadcast breaches in Jamaica. However, in response, JIPO said it has always sought to collaborate with the Motion Picture Association of America on an enforcement and public education program. The office says it remains ready and willing to work with US-based interests to ensure full IP compliance in the Jamaican market.

ECONOMIC OVERVIEW

¶16. Jamaica's already moribund economy has plunged further into recession on the back of the global economic crisis. Real GDP has been declining by up to four percent, as the economy reels from the fallout in the real sector, and in particular bauxite and construction. Three of the island's four alumina plants have been forced to halt production as external demand wanes. The falling external demand has also resulted in a slump in foreign exchange earnings, although tourism earnings have remained flat. Remittances, the second largest foreign exchange earner, have declined by almost 20 percent for the year to date. The imbalance in the country's external position led to a steep depreciation in the local currency, prompting the central bank to effect a number of demand management measures, led by record high interest rates.

¶17. These measures have had some success, as the currency stabilized and the stock of Net International Reserves (NIR)

leveled off at USD 1.6 billion. Inflation also moderated to four percent for the first half of 2009. But these gains have come at a significant cost to the fiscal accounts. The weakening fiscal dynamics combined with talk of a debt concession triggered a second downgrade in Jamaica's credit rating to CCC+ by Standard & Poor's. The fiscal crisis also forced the government into action; in addition to speeding up negotiations with the IMF for a USD 1.2 billion Stand-by Agreement, the GOJ made some changes at the technical level in the Ministry of Finance. The GOJ has also had to revise the budget it presented only five months ago. The first supplementary budget tabled in September 2009, increased expenditure and by extent the fiscal deficit by almost USD 70 million on the back of higher than budgeted interest cost. The central bank received USD 303.4 million in special drawing rights (SDRs) from the Fund at the end of August 2009, pushing the stock of NIR to nearly USD 2 billion. The GOJ also received a USD 40 million grant from the European Union for budgetary support.

MARKET ACCESS AND TRADE DISTORTIONS

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¶18. There have been a few instances where U.S. agricultural products have been the subject of increased scrutiny by the local Veterinary Division due to what they consider the absence of accompanying health certification attesting to the wholesomeness of the products. However, this is not a general problem as over 50 percent of food consumed by Jamaicans is imported from the U.S. Additionally, the U.S. continues to be Jamaica's largest trading accounting for almost 40 percent of total trade in 2008. Imports from the U.S. to Jamaica amounted to USD 3.2 billion, while exports were a less flattering USD 1.2 billion, translating into a trade deficit of USD 2 billion. There are currently no performance requirements imposed as a condition for investing in Jamaica. However, investments that expand employment opportunities are favorably considered. There is no requirement that investors purchase from local sources or export a certain percentage of output. However, "Free Zone" type incentives require companies to export at least 85 percent of their output. Jamaica's perennially dire fiscal situation makes it almost impossible for the government to provide export subsidies.

LOCAL TRADE POLICIES AND THE CBI REGION

¶19. Jamaica has always been a major proponent of regional economic integration. Most CARICOM countries look to Jamaica for leadership and the country was among the first to reduce duties on goods from CARICOM countries and has been spearheading efforts to get the CARICOM Single Market and Economy and the Caribbean Court of Justice on track. Jamaica currently runs large trade deficits with Trinidad and Tobago and Barbados and a number of regional firms, including financial institutions and manufacturing entities, have a physical presence in the country. However, there is a feeling among Jamaicans that there is no reciprocity, as when they try to do business in these markets they are met with resistance.

PROMOTION OF ECONOMIC DEVELOPMENT

¶20. Jamaica has embarked upon the preparation of a 25-year National Development Plan - Vision 2030 Jamaica, which is expected to put the country on a path to achieve developed country status by the

year 2030. With export growth less than impressive, the GOJ and the JEA are also collaborating on a National Export Strategy to expand exports in the next 2 to 3 years. Technical support is being provided by the Geneva-based International Trade Council (ITC). The ITC is providing Jamaica with a template, which will be customized to fit the local context. The aim is to concentrate on 9 sectors including agro-processing, mining and quarrying, fashion, apparel and jewelry. There is also a view that Jamaica cannot compete on volume and as such the country has to concentrate on niche markets and value addition through intellectual property and diversification. The JEA is therefore working with JIPO to establish geographical indicators (GI) for products like coffee. The JEA is also embarking on a Brand Jamaica Initiative, which will include registered certification marks to gain indigenous status.

ADMINISTRATION OF CBERA

¶21. The Trade Board is the agency responsible for administering

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the CBERA/CBTPA programs in Jamaica. The agency has been and remains willing to promote the program. Trade Board officials are, however, concerned about the underutilization of the program and attribute this to the general lack of competitiveness of a number of firms as well as the demand constraints associated with the global economic crisis.

PARNELL
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